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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,683	08/06/2002	Anthony Nikodym	22176/5	7216

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EXAMINER

ELVE, MARIA ALEXANDRA

ART UNIT

PAPER NUMBER

1725

DATE MAILED: 08/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/064,683

Applicant(s)

NIKODYM, ANTHONY

Examiner

M. Alexandra Elve

Art Unit

1725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other:

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DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marshall et al. (US Pat. 4,800,131) in view of Church (US Pat. 4,463,243).

Marshall et al. discloses a welding wire having a metallic sheath enclosing a core wire and filler powder materials. Wires are drawn to diameter ranges of 3/32 and 5/64. Arc stabilizers are added to the composite wires and include graphite, potassium and nickel compounds. These types of compounds are present in amounts of up to about 3.5 percent by weight of the total wire. Other materials contained in the wire are manganese and silicon. Marshall et al. does not teach the exact composition as instant claims or ampere values.

Church discloses a welding system in which an electric arc system uses gas mixtures of argon and carbon dioxide. The electrode currents are in the range of 100 to 1100 amperes. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the welding standards as taught by Church in the Marshall et al. wire weld system because these are merely variations of welding parameters.

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The exact amounts of each of the constituents as presently claimed are not disclosed in the prior art; however, the prior art compositions closely approximate or overlap applicant's claimed composition. It has been held that one of ordinary skill in the art at the time of the invention would have considered the claimed compositions to have been obvious because close approximation or overlapping ranges in a composition is considered to establish a prima facie case of obviousness. See In re Malagari, 182 USPQ 549, Titanium Metals v. Banner 227 USPQ 773, In re Nehrenberg 126 USPQ 383.

Claims 11-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Church (US Pat. 4,463,243) in view of Marshall et al. (US Pat. 4,800,131).

Church discloses a welding system in which an electric arc system uses gas mixtures of argon and carbon dioxide. The electrode currents are in the range of 100 to 1100 amperes. A schematic of the system reveals a reel, which supplies welding wire to a wire feed device, which pushes the wire through a flexible conduit, and the latter terminates into a welding gun. A power supply supplies current to the welding wire and includes normal voltage and amperage controls. A shielding gas tank supplies gas to a flow control device, which in turn feeds the gas to a conduit and the welding gun. Wires of tensile strengths 61 to 75 Kg/mm² are used, having wire diameters of approximately 1/16. Although Church discloses an electrode the specific composition is not taught.

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Marshall et al. discloses a welding wire having a metallic sheath enclosing a core wire and filler powder materials. Wires are drawn to diameter ranges of 3/32 and 5/64. Arc stabilizers are added to the composite wires and include graphite, potassium and nickel compounds. These types of compounds are present in amounts of up to about 3.5 percent by weight of the total wire. Other materials contained in the wire are manganese and silicon. It would have been obvious to one of ordinary skill in the art at the time of the invention to use a wire composition, as taught by Marshall et al., in the Church welding system, because these are merely variations on the types of welding wires available.

The exact amounts of each of the constituents as presently claimed are not disclosed in the prior art; however, the prior art compositions closely approximate or overlap applicant's claimed composition. It has been held that one of ordinary skill in the art at the time of the invention would have considered the claimed compositions to have been obvious because close approximation or overlapping ranges in a composition is considered to establish a prima facie case of obviousness. See In re Malagari, 182 USPQ 549, Titanium Metals v. Banner 227 USPQ 773, In re Nehrenberg 126 USPQ 383.

Response to Arguments

Applicant's arguments filed 6/19/03 have been fully considered but they are not persuasive.

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Applicant argues that there is no motivation to combine the references. The examiner respectfully disagrees because both references are drawn to analogous art, that is welding, and hence are combinable.

Applicant argues that Marshall et al. does not teach a combination of graphite and potassium that does not exceed 5 wt%. The examiner respectfully disagrees because Marshall et al. discloses arc stabilizers are added to the composite wires and include graphite, potassium and nickel compounds. These types of compounds are present in amounts of up to about 3.5 percent by weight of the total wire. Thus the compounds are present in amount of zero percent, up to 3.5 wt % and thus encompass instant claims.

Applicant argues that Church does not mention wire composition and thus cannot be used. The examiner respectfully disagrees because the rejection was based on a combination of art, that is, instant claims were unpatentable over Marshall et al. and Church. Unobviousness cannot be established by attacking the references individually when the rejection is based on a combination of references. In re Novak 16 USPQ 2d 2041, 2043 (Fed. Cir., BPAI 1989); In re Merck & Co. 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986); In re Keller 208 USPQ 871 (CCPA 1981); Ex parte Varga 189 USPQ 204; Ex parte Campbell 172 USPQ 91; In re Schneckler 168 USPQ 716 (CCPA 1971); In re Young 159 USPQ 725; In re Lyons 150 USPQ 741.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Alexandra Elve whose telephone number is (703) 308-0092. The examiner can normally be reached Monday to Friday from 6:30 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Dunn, can be reached on (703) 308-3318.

Any inquiry of general nature to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703) 308-0661.

August 10, 2003.


M. ALEXANDRA ELVE
PRIMARY EXAMINER